UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,686	12/29/2005	Stefan Schek	21295.87 (E0614US)	4430

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EXAMINER
SORRELL, ERON J

ART UNIT	PAPER NUMBER
2182	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/501,686	SCHEK, STEFAN
	Examiner	Art Unit
	ERON J. SORRELL	2182

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 July 2009</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-11</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-11</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>16 July 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 7/27/09 have been fully
considered but they are not persuasive. The applicant argues:

     Neither Cordova, nor Fourkas, nor Scott describes such out-
of-order processing of data blocks. Cordova describes a computer
functioning as a data buffer between an infrared camera and a
digital magnetic tape recorder to achieve uniformity of data
flow to the recorder. Fourkas describes a scanning microscope
with a fast scanner that acquires data (see pending Office
Action, page 3). Scott describes "first-in, first-out (FIFO)
data storage in computer systems" (see Abstract).

     A computer system processing of selected data blocks before
other data blocks, the selection being a function of a frame
burst ratio, is not taught or suggested in Cordova, Fourkas,
Scott, or their combination (see pages 5 and 6 of applicant's
remarks).

2.   As per argument, the Examiner disagrees. As to the first
part of the applicant's argument, there is no language in the
claims that requires or specifies any out-of-order processing.
The terms "out-of-order" or "re-order" are not recited in the
claims. Although the claims are interpreted in light of the

specification, limitations from the specification are not read

into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993). Regarding the final part of the

applicant's argument, the computer system of Cardova teaches

processing selected blocks of data before other blocks of data.

Even if the processing is carried out on an "in-order" basis, as

implied by the applicant, Cardova still teaches at least the

first batch being selected and processed before the second,

next, or subsequent batch. The timing of the receiving and

processing of the batch data is a direct function of the frame

burst ratio.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

> (a) A patent may not be obtained though the invention is not identically
> disclosed or described as set forth in section 102 of this title, if the
> differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the
> art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

4.   Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Cardova et al. (U.S. Patent No. 4,318,137

hereinafter "Cardova") in view of Fourkas et al. (U.S. Pub. No. 2006/0057497 hereinafter "Fourkas").

5.   Referring to claim 1, Cardova teaches a data processing method, comprising:

acquisition of data blocks in real-time (see abstract);

transmission of the data blocks to a computer system (see abstract); and

the computer system processing selected the data blocks before other data blocks as a function of a frame burst ratio (see abstract).

Cardova fails to teach the method being used in a scanning microscope with a fast scanner and the data is acquired with a fast scanner.

Fourkas teaches a scanning microscope with a fast scanner that acquires data (see paragraph 52).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to combine the teachings of Cardova with the above teachings of Fourkas in order to process the data captured by the microscope in real time as suggested by Cardova.

6.   Referring to claims 2, Cardova teaches the frame burst
ratio is selected for optimal performance (see "real time
recording" in abstract).

7.   Claims 3-11 are rejected under 35 U.S.C. 103(a) as being
unpatentable over Cardova in view of Fourkas as applied to claim
2 above, and further in view of Scott et al. (U.S. Patent No.
5,469,398 hereinafter "Scott").

8.   Referring to claims 3, the combination of Cardova and
Fourkas teaches the method of claim 2 as shown above, however
the combination fails to teach the frame burst ratio is selected
by the user as a function of the processing characteristics of
the computer system.

     Scott teaches, in an analogous system, the frame burst
ratio is selected by the user as a function of the processing
characteristics of the computer system. (see line 21-32 of
column 5).

     It would have been obvious to one of ordinary skill in the
art at the time of the applicant's invention to modify the
combination of Cardova and Fourkas with the above teachings of
Scott in order to provide the user with an override mechanism to
control the systems data transfer rate.

9.   Referring to claim 4, Cardova teaches that all data blocks
are stored in the computer system before the processing of the
selected data blocks.

10. Referring to claims 5, Scott teaches that adaptive control
is envisioned that makes the frame burst ratio variable (see
lines 21-32 of column 5).

     It would have been obvious to one of ordinary skill in the
art at the time of the applicant's invention to modify the
combination of Cardova and Fourkas with the above teachings of
Scott for the same reasons as mentioned above.

11. Referring to claims 6, Scott teaches that an initial value
is specified for the frame burst ratio (N) at the start of data
acquisition (see lines 6-13 of column 7).

     It would have been obvious to one of ordinary skill in the
art at the time of the applicant's invention to modify the
combination of Cardova and Fourkas with the above teachings of
Scott for the same reasons as mentioned above.

12. Referring to claim 7, Scott teaches the method according to
claim 6, wherein all data blocks are stored in the computer

system, before processing of the selected data blocks (see lines
21-32 of column 5 and lines 6-13 of column 7).

13. Referring to claim 8, Scott teaches the selected data
blocks are transmitted to the computer system and are processed
by the computer system before the other data blocks (see lines
21-32 of column 5).

14. Referring to claim 9, Cardova teaches the other data blocks
that have not yet been transmitted are transmitted to the
computer system then processed after the selected data blocks
(see abstract).

15. Referring to claims 10 and 11, Scott teaches the frame
burst ratio is adapted by the computer system during acquisition
of the data blocks; and in that at the same time only selected
data blocks are transmitted to the computer system (see lines
21-32 of column 5) and Cardova teaches the data blocks that do
not correspond to the variable frame burst ratio (N) are
transmitted and/or processed to the computer system with a delay
(see abstract).

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERON J. SORRELL whose telephone number is (571)272-4160. The examiner can normally be reached on Monday-Friday 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eron J Sorrell/
Primary Examiner, Art Unit 2182
November 9, 2009